

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Liliana Manuel	Team: Squad #7	CCRB Case #: 201602424	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/22/2016 5:00 PM	Location of Incident: 565 Lefferts Avenue; § 87(2)(b) Hospital	Precinct: 71	18 Mo. SOL 9/22/2017	EO SOL 9/22/2017	
Date/Time CV Reported Tue, 03/22/2016 9:16 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 03/22/2016 9:16 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Baratta	06591	950046	071 PCT
2. POM Charles Davis	01586	941623	071 PCT
3. POM Adam Elmaadawy	10563	956618	071 PCT
4. An officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Seregily	22833	947483	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Baratta	Force: On Lefferts Avenue in Brooklyn, Police Officer Michael Baratta used physical force against § 87(2)(b)	
B.POM Michael Baratta	Force: On Lefferts Avenue in Brooklyn, Police Officer Michael Baratta used pepper spray against § 87(2)(b)	
C.POM Charles Davis	Force: On Lefferts Avenue in Brooklyn, Police Officer Charles Davis struck § 87(2)(b) with a radio.	
D. An officer	Abuse: On Lefferts Avenue in Brooklyn, an officer threatened to damage § 87(2)(b) and an individual's property.	
E.POM Adam Elmaadawy	Discourtesy: At § 87(2)(b) Hospital in Brooklyn, Police Officer Adam Elmaadawy spoke discourteously to § 87(2)(b)	
F.POM Charles Davis	Abuse: At the 71st Precinct Stationhouse, Police Officer Charles Davis damaged § 87(2)(b)'s property.	

Case Summary

On March 22, 2016, § 87(2)(b) filed the following complaint via the CCRB website on behalf of her § 87(2)(b)-old son, § 87(2)(b) (Board Review 01; 24). § 87(2)(b) did not witness the incident. On March 25, 2016, § 87(2)(b) filed a duplicate complaint via the CCRB's Call-Processing System (CPS) (Board Review 23).

On March 22, 2016, at approximately 5 p.m., § 87(2)(b) was double parked outside of Celebrity Hair Studio of Brooklyn, located at 565 Lefferts Avenue in Brooklyn. With him was his wife, § 87(2)(b). PO Michael Baratta of the 71st Precinct arrived with PO Charles Davis, who was assigned to the 71st Precinct at the time of the incident. PO Baratta gave § 87(2)(b) a summons for double parking and began to walk away (Board Review 02). An argument ensued, during which PO Baratta allegedly grabbed § 87(2)(b)'s wrist, turned him around, and used or attempted to use physical force against him (**Allegation A**). PO Baratta pepper sprayed § 87(2)(b) and PO Davis allegedly struck § 87(2)(b)'s face with his radio (**Allegations B and C**). § 87(2)(b) was taken to the ground and handcuffed. Some bystanders, including § 87(2)(b) recorded the incident. An officer allegedly informed § 87(2)(b) and another unidentified individual that he would break their cameras if they continued to film the incident (**Allegations D**). § 87(2)(b) was arrested for resisting arrest, obstruction of governmental administration, and disorderly conduct (Board Review 03).

§ 87(2)(b) reportedly sustained a laceration on his right cheek, chipped teeth, and a shoulder dislocation, as a result of the incident. He was escorted to § 87(2)(b) Hospital in an ambulance with PO Adam Elmaadawy of the 71st Precinct. PO Elmaadawy allegedly cursed at § 87(2)(b) stating something to the effect of, "Shut the fuck up!" (**Allegation E**). § 87(2)(b)'s car and its' contents were vouchered by PO Davis (Board Review 20). PO Davis allegedly damaged § 87(2)(b)'s car speakers, glove compartment, charging outlet, and car seats (**Allegation F**).

§ 87(2)(b) who works at Celebrity Hair Studio of Brooklyn, and § 87(2)(b)'s § 87(2)(b)-old daughter, § 87(2)(b) witnessed the incident. § 87(2)(b) a resident of the apartment building facing the incident, witnessed a portion of the incident.

This case went beyond the 90-day benchmark by approximately three months due to the nearly two-month delay § 87(2)(b)'s attorney, § 87(2)(b) § 87(2)(b) posed in arranging for § 87(2)(b) to provide a sworn statement to the CCRB. The investigation was further delayed due to extensive attempts to obtain sworn statements from civilian witnesses and delays in receiving IAB documentation.

This case was added to the CCRB's Sensitive Case List due to § 87(2)(b)' coverage of the incident (Board Review 04; 27). § 87(2)(b) recorded a video of the incident. The video footage does not capture any police misconduct, as it was taken after the alleged misconduct occurred. The footage shows § 87(2)(b) lying on the ground with blood on his face. The full video can be viewed in IA #13 (Board Review 22; 05). An additional video was posted on § 87(2)(b) by § 87(2)(b) who was not present during the incident (Board Review 06; 25). The footage did not capture any relevant portions of the incident. Relevant portions of the footage taken by § 87(2)(b) are embedded below.

§ 87(2)(g)



201602424_20161013_1451_DM.mp4

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- § 87(2)(b)

§ 87(2)(b)

- § 87(2)(b) [REDACTED]

Civilian and Officer CCRB Histories

- This is the first complaint involving § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] (Board Review 10; 41; 43).
- PO Baratta has been a member of the NYPD for five years. He has had one prior CCRB allegation against him for an entry and search of a location. The allegation was exonerated.
- PO Davis has been a member of the NYPD for ten years. He has had three prior CCRB cases involving seven allegations, none of which were substantiated. Two of his past allegations were physical force allegations, both of which were exonerated. One of his past allegations was a chokehold allegation, and another was a threat of force allegation, both of which were unfounded.
- This is the first CCRB complaint filed against PO Elmaadawy in his two-year tenure.

Potential Issues

§ 87(2)(b) [REDACTED] did not allow the CCRB to obtain a statement from his children.

§ 87(2)(b) [REDACTED] provided a phone statement to the CCRB on March 25, 2016, and scheduled a CCRB interview to take place on March 27, 2016 (Board Review 24; 40). § 87(2)(b) [REDACTED] did not appear to her appointment, and later refused to provide a sworn statement to the CCRB.

§ 87(2)(b) [REDACTED] provided a phone statement to the CCRB on March 31, 2016 (Board Review 26). § 87(2)(b) [REDACTED] refused to provide her address. She wished to remain anonymous and refused to provide a sworn statement to the CCRB.

§ 87(2)(b) [REDACTED] provided a phone statement to the CCRB on May 25, 2016, and scheduled an interview to take place on May 31, 2016, though he stated he was not interested in providing a sworn statement (Board Review 30). § 87(2)(b) [REDACTED] did not appear to his interview and did not respond to subsequent contact attempts. Due to his uncooperativeness, § 87(2)(b) [REDACTED] did not provide a sworn statement to the CCRB.

§ 87(2)(b) [REDACTED] was interviewed by the CCRB at the office of his civil attorney, § 87(2)(b) [REDACTED] on May 12, 2016 (Board Review 28; 40). § 87(2)(b) [REDACTED] agreed to email the CCRB § 87(2)(b) [REDACTED]'s medical records from § 87(2)(b) [REDACTED] Hospital, but did not allow § 87(2)(b) [REDACTED] to sign HIPAA forms. § 87(2)(b) [REDACTED] did not respond to follow-up attempts to obtain medical documentation or signed HIPAA forms. Therefore, the CCRB was unable to obtain § 87(2)(b) [REDACTED]'s medical records for this incident.

§ 87(2)(b) [REDACTED] was interviewed on June 14, 2016, and made an allegation on behalf of § 87(2)(b) [REDACTED] and an individual who he could only identify by his alias, § 87(2)(b) [REDACTED]" (see Allegation D). § 87(2)(b) [REDACTED] had no contact information for this individual, nor did he know his real name. § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] did not identify this individual in their CCRB or IAB statements, and were unresponsive to subsequent attempts to reach them to specifically inquire about this individual. The CCRB was therefore unable to identify the second victim of Allegation D.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) alleged that over fifteen to twenty backup officers responded, one of whom allegedly told § 87(2)(b) and an unidentified individual (see Potential Issues) to turn their cameras off “before we break it [sic].” § 87(2)(b) described this officer as a white male in his 30s or 40s wearing plain clothes and a black hooded sweatshirt. § 87(2)(b) and § 87(2)(b) did not describe any plain clothes officers on scene, and did not allege that any officer commented on people filming.

PO Baratta, PO Davis, and PO Seregily denied hearing the alleged threat, and PO Elmaadawy did not mention any officer threatening to damage individuals’ property. PO Elmaadawy was unable to identify any officers on scene other than PO Seregily, PO Baratta, and PO Davis. Though PO Seregily and PO Baratta recounted plain clothes officers being on scene, they denied knowing who the plain clothes officers were, denied that they were from the 71st Precinct, and denied knowing what command they were from. PO Davis believed that the plain clothes officers were narcotics officers, but he was unable to provide any further identifying information.

The event documents show that multiple units from the 71st Precinct responded, however, they do not note any outside or specialized commands responding to the incident.

The full video footage taken by § 87(2)(b) showed three plain clothed officers, two of whom were white males who appear similar in age and stature (Board Review 22). One of the plain clothes officers wore a black jacket, but the footage did not show any further identifying information such as name plates, badge numbers, or RMP numbers. The footage did not show any officer commenting on § 87(2)(b) filming. It did not show the plain clothes officers addressing § 87(2)(b) in any way, thus drawing into question whether the subject officer of Allegation D was among the plain clothes officers depicted in the video.

Due to the absence of additional identifying information or documentary evidence, **Allegation D** has been pleaded against “an officer.”

Allegations Not Pleaded

- **Vehicle Stop**: It is undisputed that § 87(2)(b) was double parked, and that PO Baratta stopped § 87(2)(b) to tell him to move his vehicle. § 87(2)(b) was issued a summons for being double parked. Therefore, the stop allegation has not been pleaded.
- **Discourteous Language**: In her phone statement, § 87(2)(b) alleged that the same officer who pepper-sprayed § 87(2)(b) identified via the investigation as PO Baratta, told § 87(2)(b) “I’m going to need you to get the fuck away,” and, “I’m going to need you to get the fuck out of here.” No other civilians alleged that an officer spoke discourteously to § 87(2)(b) and the alleged statements were not captured in any video footage. PO Baratta denied making the alleged statement and all other interviewed officers denied hearing him do so. Moreover, § 87(2)(b) refused to provide a sworn statement to the CCRB, and all parties who did provide sworn statements did not make this allegation on § 87(2)(b) behalf. Therefore, the discourtesy allegation has not been pleaded.
- **Vehicle Search**: It is undisputed that, subsequent to § 87(2)(b)’s arrest, his vehicle was taken to the 71st Precinct Stationhouse, where PO Davis conducted an inventory search of the vehicle and vouchered the vehicle and its’ contents (Board Review 20). Given that no civilian witnessed the actual search, and the search was standard procedure for arrests involving vehicles, the vehicle search allegation has not been pleaded.

Allegation A – Force: On Lefferts Avenue in Brooklyn, Police Officer Michael Baratta used physical force against § 87(2)(b)

In addition to his original complaint, § 87(2)(b) provided a phone statement to the CCRB on March 25, 2016, a statement to IAB on April 14, 2016, and a sworn statement to the CCRB on May 12, 2016 (Board Review 24; 28; 11; 37). His statements were generally consistent. § 87(2)(b) stated that PO Baratta gave him

a summons for double parking and an argument ensued. PO Baratta and PO Davis, who had been walking to their vehicle, turned around, approached § 87(2)(b) and requested his identification. In his phone statement, § 87(2)(b) stated that as he frantically searched his pockets for his identification, PO Baratta grabbed his wrist, turned him around, and attempted to put his arm around § 87(2)(b)'s neck in a "headlock." § 87(2)(b) did not describe these actions further. During his CCRB interview, § 87(2)(b) could not recall much more about PO Baratta's specific movements of attempting to put his arm around § 87(2)(b)'s neck, and § 87(2)(b) objected to the investigator asking follow-up questions, requesting that the interview be short and "bare-boned." In his IAB statement, § 87(2)(b) alleged that PO Baratta did place him in a "headlock," though § 87(2)(b) did not describe this action further. § 87(2)(b) quickly slipped his head out of PO Baratta's arm. His breathing was never restricted. He did not use his hands to slip out of PO Baratta's arm, and did not attempt to push or make physical contact with the officers. PO Baratta had not tried to handcuff § 87(2)(b) prior to attempting to put his arm around § 87(2)(b)'s neck.

Four witnesses observed a physical altercation between § 87(2)(b) and the officers. § 87(2)(b) provided a phone statement to the CCRB (Board Review 24) and § 87(2)(b) provided a statement to IAB and phone and in-person statements to the CCRB (Board Review 12; 32; 33; 38). § 87(2)(b) provided a statement to IAB and a phone statement to the CCRB (Board Review 13; 30; 39) and § 87(2)(b) provided a phone statement to the CCRB (Board Review 26). While all the witnesses confirmed some physical contact occurred between § 87(2)(b) and an officer, § 87(2)(b) was the only one to witness the officer place § 87(2)(b) in a "headlock," though she did not describe this action further. § 87(2)(b) observed this portion of the incident and denied seeing an officer use or attempt to use a chokehold or headlock against § 87(2)(b) and § 87(2)(b) did not claim to witness a chokehold or headlock, though they were not specifically asked about it in their CCRB phone statements, and were uncooperative in the CCRB's attempts to get follow-up information from them about this allegation. § 87(2)(b) did not witness the onset of the incident, and § 87(2)(b) only intermittently observed the encounter.

§ 87(2)(b), § 87(2)(g)

None of the video footage obtained by the investigation captured this portion of the incident.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B – Force: On Lefferts Avenue in Brooklyn, Police Officer Michael Baratta used pepper spray against § 87(2)(b)

§ 87(2)(g)

It is undisputed that PO Baratta pepper sprayed § 87(2)(b). § 87(2)(b) stated that immediately after PO Baratta placed or attempted to place him in a “headlock,” PO Baratta pepper sprayed him without warning. Prior to this, neither PO Baratta nor PO Davis attempted to handcuff § 87(2)(b) nor did they make any statements to § 87(2)(b) other than PO Baratta’s request for his identification. § 87(2)(b) did not attempt to push or make physical contact with the officers, and did not attempt to escape.

§ 87(2)(b) phone statement was generally consistent with § 87(2)(b)’s statements. She alleged that after putting § 87(2)(b) in a headlock, PO Baratta pepper sprayed him. § 87(2)(b) did not provide any information about § 87(2)(b)’s resistance.

§ 87(2)(b) and § 87(2)(b) stated that prior to pepper-spraying § 87(2)(b) PO Baratta grabbed § 87(2)(b)’s arm once or twice, and § 87(2)(b) shrugged PO Baratta’s hand off of his arm. § 87(2)(b) stated that PO Baratta told § 87(2)(b) “Come here,” but that § 87(2)(b) nevertheless attempted to enter his car. § 87(2)(b) further stated that PO Davis had not attempted to make physical contact with § 87(2)(b) prior to the point in which he was pepper sprayed. § 87(2)(b) did not see § 87(2)(b) attempt to leave the scene at any point, and neither § 87(2)(b) nor § 87(2)(b) saw § 87(2)(b) attempt to push or make physical contact with either officer at any point.

§ 87(2)(b) stated that she looked out of her window and saw § 87(2)(b) surrounded by approximately three officers holding black objects in their hands, which were moving up and down by § 87(2)(b)’s face or chest. § 87(2)(b) believed § 87(2)(b) was handcuffed at the time and was not resisting.

PO Baratta stated that after § 87(2)(b) pushed PO Davis and attempted to go back into his car, PO Baratta and PO Davis pulled § 87(2)(b) toward them, preventing him from going into his car to effect his arrest. PO Davis commanded that § 87(2)(b) surrender his hands and informed him he was not free to leave. The officers attempted to grab § 87(2)(b)’s arms to handcuff him, but § 87(2)(b) flailed his arms to avoid the officers’ grip. At the time of this incident, § 87(2)(b) was 5’11” to 6’ tall and weighed approximately 300 pounds. PO Baratta was 5’10” tall and weighed 205 pounds, and PO Davis stood 5’9” and weighed 190 pounds. Given § 87(2)(b)’s stature, PO Baratta realized that the officers “had their hands full.” PO Baratta pepper sprayed § 87(2)(b) and estimated that the officers had been struggling with § 87(2)(b) for approximately five to ten seconds before he was pepper sprayed. PO Baratta stated that he pepper sprayed § 87(2)(b) so the officers could handcuff him. He only recounted pepper spraying § 87(2)(b) once.

PO Davis’s § 87(2)(g) He added that, as he and PO Baratta tried to pull § 87(2)(b) out of his car, § 87(2)(b) held onto his steering wheel, pulled his arms away from the officers, and tried to go into the car. Prior to the point in which PO Baratta pepper sprayed § 87(2)(b) PO Davis told § 87(2)(b) that he was not free to leave. PO Davis told § 87(2)(b) to stop resisting, but § 87(2)(b) continued to pull his arms away and attempted to go into the car, at which point PO Baratta pepper sprayed him a second time.

An officer may use force to reasonably ensure the safety of a member of the service or a third person, to take a lawfully arrested person into custody, or to prevent one’s escape from custody. NYPD Patrol Guide, Procedure 221-01 (Board Review 15).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation C – Force: On Lefferts Avenue in Brooklyn, Police Officer Charles Davis struck § 87(2)(b)

with a radio.

§ 87(2)(g)

§ 87(2)(b) alleged that, immediately after being pepper sprayed he felt an object, that he could not identify, hit his face. § 87(2)(b) then lost consciousness. He could not see what or who had hit him, and had not seen whether PO Davis had anything in his hands prior to feeling the impact. PO Davis had not made any statements to § 87(2)(b) and § 87(2)(b) did not allege that PO Davis had made any physical contact with him prior to when he was hit. § 87(2)(b) regained consciousness on the ground, and was already in handcuffs lying face down. His eyes and face were in severe pain. In his statement to IAB, § 87(2)(b) added that when he regained consciousness, his face felt wet, though he did not know that his face was bleeding at the time. § 87(2)(b) was later told by witnesses that PO Davis had hit him in the face with a radio. He could not recall who specifically informed him of this.

§ 87(2)(b) was transported to § 87(2)(b) Hospital, where a doctor informed him that he had a large gash on the right side of his face, and that his two front teeth were broken. § 87(2)(b)'s eyes were flushed and he received a tetanus shot, but did not receive stitches. § 87(2)(b) received follow-up treatment at a dentist office, a private physician, and at § 87(2)(b) Medical Center. As discussed in the Potential Issues section, § 87(2)(b) did not allow § 87(2)(b) to sign HIPAA forms, and the CCRB was therefore unable to obtain § 87(2)(b)'s medical records. § 87(2)(b) provided photos taken after the incident of his chipped teeth and facial laceration. The facial laceration is on his right cheekbone, below the outer corner of his right eye. He provided a photo that an unspecified witness had taken during the incident, which depicts § 87(2)(b) on the ground with blood on his right cheek and in his mouth. Though difficult to see, it appears as though his tooth or teeth are chipped in the photo (Board Review 16; 17; 18).

§ 87(2)(b) and § 87(2)(b) provided consistent statements that they observed an officer hit § 87(2)(b) in the face with a radio, and that he then fell to the ground, where he began bleeding. § 87(2)(b) stated that § 87(2)(b) remained motionless and appeared unconscious. § 87(2)(b) added the following details: there was no hesitation between when PO Davis arrived at the car and when he hit § 87(2)(b) with the radio. PO Davis had not said anything or attempted to make physical contact with § 87(2)(b) prior to hitting him, and after hitting him, PO Davis' radio fell to the ground. In his IAB interview, § 87(2)(b) stated that he heard the impact of the radio hitting § 87(2)(b) but he did not mention this in this CCRB interview. When § 87(2)(b) observed § 87(2)(b) on the stretcher later, § 87(2)(b) appeared "out of it" and § 87(2)(b) noticed that § 87(2)(b)'s front tooth was chipped.

§ 87(2)(b) provided a statement that differed from other witnesses. She observed the incident from her apartment's window, which was directly across the street from the driver's door of § 87(2)(b)'s vehicle. She saw approximately three officers holding black objects in their hands, surrounding § 87(2)(b) who was in handcuffs. It appeared as though the officers were beating § 87(2)(b)'s face or chest with the objects in their hands. § 87(2)(b) stated that one officer, identified via the investigation as PO Davis, had a larger object than the other officers, and he was particularly "feisty" and "amped up." After striking § 87(2)(b)

officers brought § 87(2)(b) to the ground. During the altercation, § 87(2)(b) was pushed up against his car by the officers and did not appear to be resisting. From her window, § 87(2)(b) could see that § 87(2)(b)'s face was bleeding profusely and she was later informed by an unknown witness that § 87(2)(b) had been hit with a radio and may have lost some teeth as a result (Board Review 14; 29).

§ 87(2)(b) was informed by § 87(2)(b) that § 87(2)(b) was hit in the face with a radio, but he did not observe this firsthand, as he was in the hair studio. § 87(2)(b) later observed § 87(2)(b) on the ground bleeding from the cheek.

PO Davis stated that after § 87(2)(b) was first pepper sprayed, § 87(2)(b)'s strength lessened, but § 87(2)(b) still refused to give the officers his arms. He continued trying to get into his car. PO Davis briefly spoke into his radio to inform the dispatcher of his sector, and continued to try to grab § 87(2)(b)'s arms. PO Davis could not recall when he holstered his radio, but stated it did not fall to the ground. He denied hitting § 87(2)(b) with the radio. § 87(2)(b) did not attempt to hit the officers, but still would not give them his arms. PO Baratta pepper sprayed § 87(2)(b) a second time, at which point PO Davis felt § 87(2)(b)'s resistance or strength further weaken.

Approximately three plain clothes officers then arrived, and PO Davis, PO Baratta, and possibly one of the plain clothed officers pulled § 87(2)(b) to the ground. § 87(2)(b) landed on his side, and his face and mouth made contact with the ground. As a result, § 87(2)(b) had blood on his face and PO Davis believed he had sustained an injury above his eye from falling on the ground. § 87(2)(b) had previously been wearing a grill which covered his teeth. The grill fell out when § 87(2)(b) was on the ground, at which point PO Davis saw that § 87(2)(b) had a chipped tooth. He did not know whether the tooth was chipped during or prior to the incident. PO Davis stated that § 87(2)(b) was conscious after being pepper sprayed, and he denied that § 87(2)(b) lost consciousness at any point. § 87(2)(b) did not attempt to strike or push PO Davis at any point after the initial push, and PO Davis did not see § 87(2)(b) push or strike PO Baratta.

The first 24 seconds of the footage taken by § 87(2)(b) embedded on page 2, was presented to PO Davis. He confirmed that the footage showed that while § 87(2)(b) was on the ground, PO Davis picked up his radio from the ground near § 87(2)(b)'s car door. After reviewing the footage, PO Davis maintained that he recounted holstering his radio after trying to put the incident over the radio. He was unsure how it ended up on the ground, but assumed that it ended up on the ground at some point while struggling with § 87(2)(b).

PO Baratta stated that prior to pepper spraying § 87(2)(b) PO Davis attempted to request backup over the radio, but he did not know when PO Davis holstered his radio. PO Baratta stated that the pepper spray was ineffective, and § 87(2)(b) continued to flail his arms and evade the officers' grip. PO Baratta did not see PO Davis hit § 87(2)(b) with his radio, hand, fist, or any blunt object. With the help of two plain clothes officers, they brought § 87(2)(b) to the ground where he landed on his stomach and continued to flail his arms and pull them away from the officers. PO Baratta estimated that § 87(2)(b) was handcuffed within five seconds after landing on the ground. After handcuffing § 87(2)(b) PO Baratta noticed that § 87(2)(b) had blood on his face, but he did not see where the blood was coming from, how he sustained the injury, and whether his face made contact with the ground when he fell. § 87(2)(b) initially had a "piece of metal" over his teeth. PO Baratta did not know if the grill fell out at any point, and did not notice whether § 87(2)(b)'s teeth were chipped.

PO Elmaadawy and PO Michael Seregily of the 71st Precinct were interviewed at the CCRB, but did not witness this portion of the incident (Board Review 31; 34).

At the 20 second mark in the footage taken by § 87(2)(b) embedded on page 2, after handcuffing § 87(2)(b) PO Davis is seen picking up his radio from the ground near § 87(2)(b)'s car door (Board Review 22; 05). At the 54 second mark, the camera pans to § 87(2)(b)'s face, showing blood on his eyes and mouth.

The medical treatment of prisoner report noted that § 87(2)(b) sustained a laceration to his face while being handcuffed on the ground. The report does not mention any other injuries (Board Review 21).

An officer may use force to reasonably ensure the safety of a member of the service or a third person, to take a lawfully arrested person into custody, or to prevent one's escape from custody, NYPD Patrol Guide, Procedure 221-01 (Board Review 15). The Police Student's Guide states that impact techniques should be used to protect members of service or others against assault. The guide suggests that when using impact techniques such as a baton, officers should strive to strike extremities and larger muscle groups rather than the head, which could result in serious injury or death (Board Review 19).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation D – Abuse of Authority: On Lefferts Avenue in Brooklyn, an officer threatened to damage § 87(2)(b) and an individual's property.

In his sworn statement to the CCRB, § 87(2)(b) explained that while § 87(2)(b) was on the ground, § 87(2)(b) and another individual filmed the incident. As addressed in the Potential Issues section, attempts to identify this individual were unsuccessful. § 87(2)(b) alleged that an officer told § 87(2)(b) and the unidentified individual to turn their cameras off “before we break it [sic].” Neither § 87(2)(b) nor § 87(2)(b) alleged the threat to damage property in their CCRB phone statements or their statements to IAB. § 87(2)(b) did not provide a sworn statement to the CCRB.

§ 87(2)(b), § 87(2)(g)

Allegation E – Discourtesy: At § 87(2)(b) Hospital in Brooklyn, Police Officer Adam Elmaadawy spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that PO Elmaadawy escorted him to § 87(2)(b) Hospital in an ambulance. When they arrived, § 87(2)(b) begged for help. PO Elmaadawy responded, cursing at § 87(2)(b) and using the word “fuck.” Though § 87(2)(b) could not recall the exact statements made by PO Elmaadawy, he believed PO Elmaadawy stated something to the effect of, “Shut the fuck up!” or, “Be the fuck quiet.”

PO Elmaadawy stated that upon arriving at the hospital, § 87(2)(b) was taken to the waiting room, where he was “being irate” by yelling about his eyes. PO Elmaadawy stated that he raised his voice and told § 87(2)(b) “Enough!” but denied telling § 87(2)(b) “Shut the fuck up,” or, “Be the fuck quiet.” He denied using any profanity towards § 87(2)(b).

PO Seregily stated that he drove to § 87(2)(b) Hospital in an RMP and arrived there at the same time as PO Elmaadawy and § 87(2)(b). At one point, PO Elmaadawy went into the emergency room with § 87(2)(b) while PO Seregily waited directly outside of the room. He did not hear any conversation between § 87(2)(b) and PO Elmaadawy while waiting outside. PO Seregily denied hearing PO Elmaadawy use profanity towards § 87(2)(b) at any point.

§ 87(2)(b), § 87(2)(g)

Allegation F – Abuse of Authority: At the 71st Precinct Stationhouse, Police Officer Charles Davis damaged § 87(2)(b) s property.

§ 87(2)(b) s car was seized pursuant to his arrest. § 87(2)(b) had previously installed speakers in his car, which were wired to the car’s system. When § 87(2)(b) s car was returned to him, he found that the speakers had been ripped from the back and sides of his car, and that some of the wires were damaged as a result. The back panels of the rear car seats were ripped. The glove compartment no longer opened, and the charging outlet no longer worked. § 87(2)(b) did not see who transported his car to the stationhouse, or who had searched or damaged his car. § 87(2)(b) repaired most of the damage to his car. He kept the receipt for the repairs, which cost him approximately \$300. § 87(2)(b) s attorney refused to provide any evidence – including the receipts for the repaired damage and photos of the damage – to the CCRB.

PO Davis denied driving § 87(2)(b) s car back to the 71st Precinct Stationhouse, and denied knowing who did so. He confirmed, however, that he performed an inventory search of the car and vouchered the car and its’ contents. He was the only officer involved in the search. PO Davis confirmed that he removed and vouchered multiple speakers and an amplifier from the car. He confirmed that the speakers had some wiring, but stated that neither the speakers nor the amplifier had been attached to the car, and neither were damaged prior to or after removing them. PO Davis denied damaging the charging outlet or glove compartment. He

stated that one of the seat panels was already torn. PO Davis denied damaging the seat further, or damaging any other seats.

PO Baratta did not take part in the search or vouchering of the vehicle and did not know if any other officer assisted PO Davis in doing so. PO Baratta recounted briefly looking at the interior of the car, but could not recall if he did so before or after it was searched. He did not pay much attention to the car, and did not recall observing any damage to the car's interior.

The property voucher confirmed that PO Davis was the invoicing officer, and that he removed multiple speakers, an amplifier, and miscellaneous wires, among other things. Though he noted damage to some items such as an iPad and iPhone, and second phone, he did not note any damage to the speakers or amplifier. He listed the interior condition of the vehicle as "poor" and noted that the glove compartment was opened at the time of the inspection. There was no notation regarding the condition of the seats (Board Review 20).

§ 87(2)(b), § 87(2)(g)

Squad: 7

Investigator:	_____	<u>Liliana Manuel</u>	_____
	Signature	Print	Date

Squad Leader:	_____	<u>Diana Murray</u>	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date